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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 253 of 1986

IN

SPECIAL CIVIL APPLICATION NO. 2836 OF 1986

WITH

SPECIAL CIVIL APPLICATION NO. 2216 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

A.D.PAUL AND OTHERS

v.

DIST. DEVELOPMENT OFFICER, VADODARA DIST.PANCHAYAT
AND OTHERS

Appearance :

LETTERS PATENT APPEAL NO. 253/86

Notice to Appellants No.6 & 7 served,

Appellants No.1 to 5 unserved

Respondents No.1 to 3, 5 & 6 served

Respondents Nos.4 to 7 unserved

SPECIAL CIVIL APPLICATION NO. 2216/87

Mr. Manoj N Popat for petitioner

Mr. H.M.Bhagat for Respondents No.1 & 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.M.KAPADIA

(Date of Decision : 28/02/2000

ORAL JUDGMENT

(Per : Panchal, J.)

The above-numbered appeal which is filed under Clause 15 of the Letters Patent Appeal is directed against judgment dated July 21, 1986 rendered by the learned Single Judge in Special Civil Application No. 2836/86 by which challenge to final seniority list dated May 16, 1986 is negatived. In Special Civil Application No. 2216/87, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dated May 6, 1987 passed by the District Development Officer, District Panchayat, Vadodara promoting respondent no.3 to the post of Leprosy Supervisor and further to direct the District Development Officer, Vadodara District Panchayat to promote the petitioner to the said post with all consequential benefits. In Special Civil Application No. 2216/87, rule was issued by an order dated June 26, 1987 and thereafter a direction was given on October 1, 1999 to hear the petition with Letters Patent Appeal No. 253/86. That is how, Special Civil Application No. 2216/87 is listed for final hearing before the Court with Letters Patent Appeal No. 253/86.

2. The petitioner in Special Civil Application No. 2216/87 is also appellant no.1 in Letters Patent Appeal No. 253/86 and Mr. M.N.Popat, learned Counsel appears for him. We may state that in Special Civil Application No.2836/86 which has given rise to Letters Patent Appeal No. 253/86, one learned Counsel was representing all the petitioners. Learned senior counsel, who was representing the original petitioners in Special Civil Application No. 2216/87 was elevated to Bench long back. Thereupon notices were issued calling upon the appellants to make necessary arrangement for engaging another lawyer or for their appearance in person. The office endorsement indicates that appellants no.6 & 7 are served, but notices to appellants no.2 to 5 have been returned unserved. As stated earlier, Mr. M.N.Popat, learned Counsel now appears for appellant no.1 also. Learned Counsel for appellant no.1 has pleaded the case of all the appellants. Though appellants no.6 & 7 are duly

served, they have neither engaged any other lawyer nor made any arrangement for their appearance in person. This is an old appeal of the year 1986 and, therefore, instead of issuing fresh notices upon the appellants no.2 to 5, we propose to dispose of this appeal on merits.

3. The District Health Officers of different districts as well as District Panchayat, Vadodara had intimated District Health Officer, Ahmedabad that qualified candidates for the post of Leprosy Assistants as per the recruitment rules were not available in their districts and, therefore, a list of qualified candidates should be sent to the District Panchayat, Vadodara and other District Panchayats. Accordingly, the District Health Officer, Ahmedabad had called candidates who had passed S.S.C. as well as S.I. examinations for interview through Employment Exchange Offices of the State. Interviews of the candidates called for were taken by the Special Committee of the Office of District Health Officer, Ahmedabad. The District Health Officer, Ahmedabad with his letter dated January 21, 1977 addressed to the District Health Officer, Vadodara sent a list of those candidates who were found successful at the interview and requested the District Panchayat to consider the case of giving appointment to them on the post of Leprosy Assistants as per the District Panchayat recruitment rules. This letter of District Health Officer, Ahmedabad is at page 17 of the appeal compilation.

4. The administration and establishment of 23 Units of Survey, Education and Treatment in Leprosy in Baroda district run by the State Government under the plan of National Leprosy Control Programme was taken over in pursuance of Office Order dated November 29, 1976. On receipt of the list of 20 selected candidates for filling-up vacant posts of Leprosy Assistant under the said plan, the District Development Officer, Vadodara by an order dated March 14, 1977 had appointed them on the post of Leprosy Assistants on the terms and conditions stipulated therein. The relevant terms and conditions which were stipulated in the said order were as under :-

"The aforesaid order will be subject to rules made from time to time under section 203 of the Gujarat Panchayats Act. The aforesaid appointment will be subject to following conditions:

1. The aforesaid appointment is given on purely temporary basis and liable to be terminated without giving any notice.

2. They are given appointment on the condition that they have to be got selected in the Gujarat Panchayat Services Selection Board. It will be their responsibility to get them selected in the Board after following procedure, when the applications are invited by the Board They are liable to be terminated from the services, if not selected in the Board. They will not receive any right of the cadre without selection in the Board.

3 xxxx xxxxxxx xxxxxx xxxxxxx xxxxxxx
to
7 xxxxxxx xxxxxxxx xxxxxxxx"

Meanwhile, certain employees who were appointed on the post of vaccinators, were promoted to the post of vaccination supervisors and were absorbed in the cadre of Leprosy Assistants. A provisional seniority list of Leprosy Assistants was published on April 5, 1982. Therein, present appellants and others were shown to be senior to respondents no.3 to 7. The respondents no.3 to 7 herein had, therefore, filed Special Civil Application No. 410/82 challenging the said provisional seniority list. The petition was dismissed by the learned Single Judge of this Court on April 14, 1986 with following observations :

"CORAM : I.C.BHATT

ORAL ORDER :

The petitioners, who are promoted from the post of vaccinators, have been working as Leprosy Assistants. The petitioners are shown in the seniority list published on 5.4.1982 at Sr.Nos.16 to 27. This seniority list is treated as a provisional seniority list. The present respondents are at Sr.Nos. 1 to 15 in the said provisional seniority list. The dispute between the two groups is as to how the seniority is to be finally determined between the parties. The petitioners have filed certain objections to the same. The petitioners as well as the respondents Nos.5 to 19 who are direct recruits will be given an opportunity of hearing before the seniority list published on 5.4.1982 is finalised. The petitioners as well as these respondents nos. 5 to 19 shall be given full opportunity of representing their case before the respondents nos. 1 and 2.

In the present case, order dated 26.10.1977 (Annexure-B) passed by the Development Commissioner, Gandhinagar has been produced wherein in para 4 there is observation that those who are directly appointed at the instance of the Director of Health should be treated as

relieved. In that connection it is directed that respondents no. 1 & 2 should determine the seniority as if those persons were never relieved and they continued in service. By this order, nothing should be treated as having been finally decided with regard to the question of seniority or the promotion. The question of promotion between the direct recruits and the promotions shall be considered by the respondents no. 1 and 2 after finalising the seniority list according to the rules and the regulations. The respondents no.1 and 2 are directed to finalise the seniority list within six weeks from the receipt of writ of this Court. In view of this, the petition does not survive and is disposed of accordingly. Rule discharged. Interim relief vacated. Promotions shall be made by the competent authority if the seniority list is finalised. No order as to costs."

5. In view of the direction given to respondents no.1 & 2 to finalise seniority list within a period of six weeks from the date of receipt of writ, respondents no.1 & 2 finalised seniority list vide order dated May 16, 1986. In the said seniority list, respondents no.3 to 7 in appeal were shown as senior to the appellants. Therefore, appellants instituted Special Civil Application No. 2836/86 praying the Court to issue writ of mandamus or any other appropriate writ, order or direction to quash the said final seniority. As observed earlier, the learned Single Judge has dismissed the petition in limine by a reasoned order which has given rise to Letters Patent Appeal No. 253/86.

6. After admission of Letters Patent Appeal, the respondent no.3 in Special Civil Application No.2216/87 is promoted to the post of Leprosy Supervisor by an order dated May 6, 1987 and, therefore, Mr. P. D. Paul who is appellant no.1 in Letters Patent Appeal No. 253/86, has filed separate petition challenging promotion of respondent no.3.

7. We have heard Mr. M.N.Popat, learned Counsel for the appellants and gone through the grounds of challenge raised in the memorandum of appeal, judgment of the learned Single Judge which is impugned in the appeal as well as documents which are produced along with Special Civil Application No. 2836/86 and Special Civil Application No. 2216/87. The submission that the appellants were appointed on the post of Leprosy Assistants with effect from March 14, 1977 and, therefore, they should have been treated to be senior to respondents no.3 to 7 is devoid of merits. The terms and

conditions on which the appellants were appointed have been elaborately mentioned in order dated March 14, 1977 which was passed by the District Development Officer, Vadodara. A bare reading of the said order makes it manifest that their appointments were subject to the rules framed from time to time under section 203 of the Gujarat Panchayats Act. The appointments were given on purely temporary basis and were liable to be terminated without giving any notice. The main condition of the appointment was that the appointees were required to qualify at the written examination to be held by Gujarat Panchayat Service Selection Board constituted under section 210 of the Gujarat Panchayats Act, 1961. In exercise of powers conferred by section 323 of the Gujarat Panchayats Act, 1961, the Government of Gujarat had made Rules called "Gujarat Panchayat Service Selection Board (Functions) Rules, 1964. As per those rules, qualifying written examination was to be held when recruitment to any of the posts mentioned in the Schedule was to be made by direct recruitment. In exercise of powers conferred by section 323 read with sub-sec. (3) of section 203 of the Gujarat Panchayats Act, 1961, Government of Gujarat had made rules further to amend the Gujarat Panchayat Service Selection Board (Functions) Rules, 1964 called "Gujarat Panchayat Service Selection Board (Functions) (Third Amendment) Rules, 1980 and in the Schedule under the heading, "4. Medical Public Health and Ayurved" after Entry (xi), following entries were added, namely,

(xii) - Leprosy Supervisor
(xiii)- Leprosy Assistants.

Thus, in view of the amendment of Gujarat Panchayat Service Selection Board (Functions) Rules, 1964 and in view of the conditions mentioned in the appointment orders of all the appellants, it was necessary for them to pass qualifying examination which was to be conducted by the Gujarat Panchayat Service Selection Board. The appellants were never selected by the said Board till filing of Special Civil Application No.410/83. From the record, it becomes clear that the appellant no.2 was not even selected on the date on which Special Civil Application No. 2836/86 was filed. For the purpose of reckoning seniority, date of passing qualifying examination of the Board would be relevant and not the initial appointment which was made totally on ad hoc and temporary basis and was subject to the appellants' passing the qualifying examination. It is not the case of the appellants that they had passed the qualifying examination which was held by the Board earlier than respondents no.3 to 7. Under the

circumstances, no exception can be taken to the final seniority list which was prepared on May 16, 1986, wherein respondents no.3 to 7 are shown to be senior to the appellants.

8. The submission that provisions of the Gujarat Panchayat Service Selection Board (Functions) (Third Amendment) Rules, 1980 cannot be made applicable retrospectively to the case of the appellants, has no substance. The order dated March 14, 1977 by which the appellants were appointed on purely temporary basis had made it very clear that their appointments were subject to the rules made from time to time under section 203 of the Gujarat Panchayats Act. It was specifically stipulated therein that they were required to be qualified at the written examination to be held by the Gujarat Panchayat Service Selection Board. Having accepted the ad hoc appointment subject to the conditions stipulated therein, now it is not open to the appellants to contend that the provisions of the Gujarat Panchayat Service Selection Board (Functions) (Third Amendment) Rules, 1980 are not applicable to them. The plea that judgment of the High Court in Special Civil Application No. 410/83 is misconstrued by respondents no.1 & 2 while preparing final seniority list, has also no merits. In Special Civil Application No. 410/83, the learned Single Judge of this Court had directed respondents no.1 & 2 to prepare final seniority list in accordance with statutory rules and regulations. The appellants have failed to point out as to which rule is contravened by respondents no.1 & 2 while preparing final seniority list. Under the circumstances, the final seniority list prepared by respondents no.1 & 2 is not liable to be set aside on the ground that respondents no.1 & 2 have misconstrued directions given by the High Court in Special Civil Application No. 410/83.

9. This brings us to the last question whether the promotion of the respondent no.3 to the post of Leprosy Supervisor was in accordance with the rules or not. We may mention that promotion to the post of Leprosy Supervisor was governed by the Gujarat Panchayat Service (Classification and Recruitment) Rules, 1967 as amended by the Gujarat Panchayat Service (Classification and Recruitment) (Twentieth Amendment) Rules, 1980, which were made by the Government of Gujarat in exercise of powers conferred by section 323 read with sub-section (3) of section 203 of the Gujarat Panchayats Act, 1961. As per the statutory rules, appointment to the post of Leprosy Supervisor was to be made by promotion of a person of proved merit and efficiency from amongst the

persons working as Leprosy Assistants who possessed minimum five years' experience as Leprosy Assistant. The only ground on which the promotion of the respondent no.3 to the post of Leprosy Supervisor is challenged by the petitioner in Special Civil Application No. 2216/87 is that he was senior to respondent no.3 in the cadre of Leprosy Assistant. A bare reading of Rule 11-D makes it more than clear that seniority is not the criterion for promotion at all, but the criterion adopted by the Legislature for promotion to the post of Leprosy Supervisor is proved merit and efficiency. The petitioner has not stated a word about the proved merit and efficiency of the respondent no.3. The petitioner has not produced any record for perusal of the Court which would indicate that he is more meritorious and having more efficiency than respondent no.3. Promotion of respondent no.3 to the post of Leprosy Supervisor is not shown to be contrary to the statutory requirements. Under the circumstances, the order dated May 6, 1987 promoting respondent no.3 to the post of Leprosy Supervisor cannot be set aside nor any direction can be given to respondents no.1 & 2 to promote the petitioner to the said post.

10. Learned Counsel for the appellants has failed to point out any error in the judgment of the learned Single Judge necessitating our interference in the present appeal. The net result of the above discussion is that both - the appeal as well as Special Civil Application are liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed, with no order as to costs. Special Civil Application No. 2216/87 also fails and is dismissed. Rule is discharged, with no order as to costs. Interim relief granted earlier is hereby vacated.

(J.M.Panchal,J.)

28.2.2000 (A.M.Kapadia,J.)

(patel)

